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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA, : Case No. 2:14-cr-00496-GAM-3 *file*  
4 Plaintiff, : 2:14-cr-00516-GAM-2 *172*  
v :  
5 NATHANIEL DA-MEIR COLES, :  
6 Defendant. : Philadelphia, Pennsylvania  
7 : June 21, 2019  
8 : 10:20 a.m.  
.

9 TRANSCRIPT OF SUPPRESSION HEARING  
10 BEFORE THE HONORABLE GERALD A. MCHUGH  
UNITED STATES DISTRICT COURT JUDGE

FILED

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KATE HARRELL, Clerk  
By TG Dep. Clerk

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1 THE COURT: All right. We can go on the record.  
2 This is United States of America versus Nathaniel Coles, criminal  
3 matters fourteen dash four nine six dash three and fourteen dash  
4 five one six dash two.

5                   Would counsel please identify themselves for the  
6 record?

9 THE COURT: Mr. Eckert.

10 MS. DINA CHAVAR: Good morning, Your Honor. Dina  
11 Chavar on behalf of Nathaniel Coles.

12 THE COURT: Good morning Ms. Chavar and good  
13 morning to you Mr. Coles.

14 MR. NATHANIEL COLES: Good morning, Your Honor.

17 || Thank you for your assistance, sir.

18 OFFICER CHRISTOPHER BOYER: Good morning, Your  
19 Honor. Thank you.

20 THE COURT: Good morning. Mr. Coles, I'm sure,  
21 sir, that you are -- you know why we're here in court today?

22 MR. NATHANIEL COLES: Yes, Your Honor.

1                   MR. ECKERT: I have, Your Honor.

2                   MS. CHAVAR: Yes, Your Honor, I have.

3                   THE COURT: All right. And Mr. Coles, there's a  
4                   document prepared by Probation we call the Pre-sentence  
5                   Investigation Report, and have you had the opportunity to  
6                   review that with Ms. Chavar?

7                   MR. NATHANIEL COLES: Yes, Your Honor.

8                   THE COURT: All right. And I know there's some  
9                   objections, Ms. Chavar, which we will get to in a moment,  
10                  but before I do that, let me just ask, have you had enough  
11                  time, Mr. Coles, to meet with Ms. Chavar and prepare for the  
12                  sentencing today?

13                  MR. NATHANIEL COLES: Yes, Your Honor.

14                  THE COURT: All right. And are you satisfied with  
15                  the representation that you have received?

16                  MR. NATHANIEL COLES: Yes, Your Honor.

17                  THE COURT: And are you feeling physically and  
18                  mentally well enough to proceed with the sentencing today?

19                  MR. NATHANIEL COLES: Yes, Your Honor.

20                  THE COURT: All right. Counselor, I understand  
21                  that there may be an item you wish to address at side bar.  
22                  Would you like to do that now or at a later point?

23                  MS. CHAVAR: We can do it now, Your Honor.

24                  MR. ECKERT: Sure.

25                  THE COURT: Now? All right. You may approach.

1 [Sidebar Discussion Begins]

2 (Whispering and off mic, generally unintelligible)

3 MR. ECKERT: Morning, Your Honor.

4 THE COURT: Just -- yeah, make sure we get in the  
5 mic.

6 MS. CHAVAR: Okay. So with respect to the  
7 argument and acceptance of responsibility clause, I'm going  
8 (unintelligible). He attended (unintelligible) prior to the  
9 case coming to trial. I of course was not involved  
10 (unintelligible).

11 THE COURT: What do you mean he was  
12 (unintelligible)?

13 MS. CHAVAR: (unintelligible)

14 MR. ECKERT: (unintelligible). This was before I  
15 was involved. (unintelligible) my -- my understanding.

16 THE COURT: Yeah. Okay. Yeah, it's not  
17 (unintelligible).

18 MR. ECKERT: (unintelligible).

19 THE COURT: All right. Thank you.

20 MR. ECKERT: (unintelligible).

21 MS. CHAVAR: (unintelligible) about why  
22 (unintelligible) I just want to let the court know and  
23 (unintelligible) which he did (unintelligible)

24 THE COURT: Well, let me ask you about that. In  
25 terms of the sensitivity of doing this at side bar, is there

1 anyone in the courtroom that you're concerning about other  
2 than family?

3 MS. CHAVAR: Other than family, no.

4 THE COURT: So I mean I'd like to hear this I  
5 think as part of the argument unless you think there's some  
6 security risk involved.

7 MS. CHAVAR: What if I just (unintelligible)?

8 THE COURT: That's fine and I will --

9 MS. CHAVAR: (unintelligible)

10 THE COURT: -- incorporate -- I will incorporate  
11 this detail into your argument, so --

12 MS. CHAVAR: Thank you.

13 THE COURT: -- (unintelligible) and now that I'm  
14 here, do you want to address that particular argument, Mr.  
15 Eckert?

16 MR. ECKERT: Sure. First off, that while there  
17 were (unintelligible) my understanding is that  
18 (unintelligible) jail and talked to him. This is not a  
19 defendant who came around and said, you know,  
20 (unintelligible) cooperation during certain pre-trial  
21 discussions that were had and denied all cooperation  
22 (unintelligible) as were his right and he has been given  
23 multiple opportunities to accept responsibility  
24 (unintelligible). I think at this stage, you can't say well  
25 he went through a couple of (unintelligible) and now

1 (unintelligible).

2 THE COURT: Okay. I understand your position.  
3 One other question with his history, when McGarrigle took  
4 over (unintelligible) was it because of Mr. Coles'  
5 requesting new counsel?

6 MS. CHAVAR: I believe so.

7 MR. ECKERT: I believe so.

8 MS. CHAVAR: Yeah.

9 MR. ECKERT: I believe so.

10 MS. CHAVAR: Yes.

11 THE COURT: Okay. Because I think that -- I think  
12 (unintelligible) --

13 MS. CHAVAR: (unintelligible).

14 THE COURT: -- I think -- I think that bears on  
15 it.

16 MS. CHAVAR: Do you?

17 THE COURT: (unintelligible) least respect  
18 (unintelligible) Mr. Joseph as counsel and make peace and  
19 Mr. (unintelligible) with that advice (unintelligible). I  
20 think that that bears on whether or not he's entitled to a  
21 reduction. That's the only reason I asked the question.

22 MR. ECKERT: Right. I would just offer  
23 (unintelligible) that it's clear that Mr. Joseph was  
24 encouraging him -- it's my understanding is that Mr. Joseph  
25 was encouraging him to (unintelligible) perhaps Mr.

1           McGarrigle (unintelligible) told him what he wanted to hear

2           --

3           THE COURT: Right.

4           MS. CHAVAR: That's --.

5           MR. ECKERT: -- but again, that bears upon  
6           (unintelligible).

7           THE COURT: Again, and Arnold Joseph, from my  
8           experience, is well received by the clients he represents.  
9           He's an experienced lawyer and (unintelligible) have a  
10          situation where a defendant is asking to have him replaced  
11          with new counsel just suggests to me (unintelligible) he's  
12          not happy with the advice being given by counsel.

13          MR. ECKERT: Right.

14          THE COURT: I want to put those things on the  
15          record as part of my thought process in determining whether  
16          or not I think that particular reduction would be  
17          appropriate.

18          MS. CHAVAR: Okay.

19          MR. ECKERT: Sure.

20          MS. CHAVAR: I just want to clarify  
21          (unintelligible) --.

22          MR. ECKERT: (unintelligible)? Forgive me.

23          MS. CHAVAR: (unintelligible) and I just want to  
24          say (unintelligible) establish a communication  
25          (unintelligible). It was touch and go sometimes.

1 THE COURT: (unintelligible) it was late in the  
2 process when he decided to plead to the separate charge, so  
3 --.

4 MS. CHAVAR: (unintelligible) That was never --  
5 that was never --

6 THE COURT: (unintelligible).

7 MS. CHAVAR: -- never (unintelligible).

8 THE COURT: All right. (unintelligible).

9 MS. CHAVAR: Let -- may I have a moment, Your  
10 Honor, just to --

11 THE COURT: Of course, Ms. Chavar.

12 MS. CHAVAR: -- let Mr. Coles know?

15 | [Sidebar Discussion Ends]

16 MS. CHAVAR: Thank you, Your Honor.

17 THE COURT: No problem, Ms. Chavar. For purposes  
18 of the record, in preparation for the hearing today, the  
19 Court is obviously familiar with the case having presided  
20 over several trials, including the one trial in which Mr.  
21 Coles participated and so I'm familiar with the overall  
22 investigation and case. I've obviously reviewed the Pre-  
23 sentence Investigation Report, the Sentencing Memoranda,  
24 both the government and the defense. Seven letters have  
25 been submitted on Mr. Coles behalf and I have read those as

1 well. I understand that his mother is in court today. Is  
2 that so?

3 Good morning, ma'am.

4 MS. NEVADA COLES: Good morning.

5 THE COURT: And I appreciate the fact that you've  
6 handed in the transcript for your son showing his graduation  
7 from high school.

8 MS. NEVADA COLES: Yes, thank you.

9 THE COURT: I -- I have reviewed that, ma'am, and  
10 it is part of the record in the case. All right.?

11 MS. NEVADA COLES: Okay. Thank you.

12 THE COURT: I just wanted you to know that. And  
13 so the Court brings all of that familiarity to the case  
14 here. I'll note that there is -- there has been a  
15 withdrawal of information charging prior offenses in both  
16 docket fourteen four ninety-six and docket fourteen five one  
17 six. Is that correct, Mr. Eckert?

18 MR. ECKERT: It is, Your Honor.

19 THE COURT: All right. So we've accomplished that  
20 as well.

21 MR. ECKERT: Thank you.

22 THE COURT: And there is an outstanding motion for  
23 forfeiture and Ms. Chavar, is there any objection to that?

24 MS. CHAVAR: No objection, Your Honor.

25 THE COURT: All right. That being the case, the

1 Court will proceed to sign the order of forfeiture. What  
2 I'd like to do now, Counsel, is turn back to the Pre-  
3 sentence Investigation Report and there were two formal  
4 objections to the report, Ms. Chavar, and then there's  
5 argument set forth in your Sentencing Memorandum which was  
6 very well done. We'll -- we'll -- what I'd like to do is  
7 with respect to your first objection, it has to do with  
8 Probation's refusal to apply the downward adjustment of  
9 offense level under Three B one point two for a minimum or  
10 minor involvement. I'd like to defer that until argument.  
11 All right?

12 MS. CHAVAR: Uh-huh.

13 THE COURT: So we'll pass over that for now. The  
14 second objection though has to do with whether for the  
15 Career Offender Enhancement to apply as set forth in  
16 paragraph one o seven of the report whether it was required  
17 for the government to -- to file an Eight fifty-one  
18 information and Probation took the position that it's not  
19 necessary and that's my understanding of the law as well.

20 Government, what's your position on that?

21 MR. ECKERT: No, I would -- I would concur with  
22 that, Your Honor. They're two distinct -- the Career  
23 Offender Guidelines are not borne out by the Eight fifty-one  
24 notice.

25 MS. CHAVAR: Your Honor, if I articulated that in

1 a way it was misunderstood. That's not what I meant to  
2 advance.

3 What I meant to say is that at least one of the --  
4 the predicates that trigger the Career Offender Provision  
5 would probably not be the type of predicate that would  
6 trigger an Eight fifty-one filing. So we should consider  
7 that and -- and I do understand that -- that it's two  
8 different tests and I'll discuss that as a variance. I'll  
9 withdraw if you had thought that that was --.

10 THE COURT: Why -- yeah, why don't we consider  
11 that formal objection withdrawn and then --

12 MS. CHAVAR: Yes.

13 THE COURT: -- why don't weave into your argument  
14 the nature of the one prior offense that you think perhaps  
15 should not be counted --

16 MS. CHAVAR: Yes.

17 THE COURT: -- in deciding whether the Career  
18 Offender Enhancement applies. Is that satisfactory?

19 MS. CHAVAR: Yes, Your Honor. I'm prepared to do  
20 that.

21 THE COURT: All right. Thank you. I think that's  
22 -- that's the appropriate way in which to proceed, so with  
23 that having been established, Counsel, are there any other  
24 unresolved objections or any formal motions before we get to  
25 argument?

1 MR. ECKERT: There are none from the Government,  
2 Your Honor.

3 MS. CHAVAR: And then there is the two-point  
4 reduction for acceptance of responsibility.

7 MS. CHAVAR: Thank you.

10 MR. ECKERT: Certainly, Your Honor. So if -- if  
11 the Court will permit, I'll address the objections -- the  
12 acceptance objection first and then the minimal role really  
13 is the sentencing argument --

14 THE COURT: Right.

15 MR. ECKERT: -- and then we'll close with a little  
16 bit of background about Mr. Coles. I think first off, let  
17 me start with the standard for acceptance, the note itself  
18 reads in rare situations or in rare cases. So it's  
19 certainly not an insurmountable bar, but it's a very  
20 difficult bar for a defendant who goes to trial to earn  
21 acceptance. This is not a case where there's drugs and a  
22 gun and the defendant in opening says well, the drugs were  
23 mine, but the gun wasn't. Certainly, in that case, he  
24 should get the acceptance for the drugs which he conceded at  
25 the trial.

1                   My recollection of what the defendant's position  
2 was at trial is sort of similar to what is in his Rule  
3 Twenty-nine motion where -- where he said quote what is  
4 more, the evidence presented that also suggests that Mr.  
5 Coles had attempted a failed prior deal with Daniel, but  
6 that he knew vaguely of Mr. Church's plans in this attempted  
7 transaction and that is my recollection of generally what  
8 their position was at trial that there may have been  
9 something going on, but he wasn't really deeply involved in  
10 the sense that Coles -- I'm sorry, in the sense that Womack  
11 were or Church were. That to me is a defense. He's denying  
12 his full intent to join the conspiracy. That's a factual  
13 defense and -- and based on that, we would submit that the  
14 -- certainly, the two-level departure for acceptance would  
15 not be appropriate.

16                   I also would note that there was a lot, in my  
17 recollection, and lot of debate -- not debate, but argument  
18 from the defense about the (unintelligible) interrogatory.  
19 Again, as well as the (unintelligible). I don't mean to  
20 suggest a negative inference there, but certainly there was  
21 a lot of back and forth during the trial about whether he  
22 knew what the amount was from the defense's perspective and  
23 when he was fully intending to join in that conspiracy.

24                   Again, I -- I would offer to the Court that that's  
25 a factual denial of the elements of guilt and as such, he

1                   does not qualify for the two-level downward departure.

2                   Your Honor, for -- for the minimal role, I would  
3                   just like to take -- I think what makes the most sense is to  
4                   go over some of the facts of the case and certainly to the  
5                   extent we're in argument, let me just preface by saying on  
6                   the Five sixteen case, the Government would have asked the  
7                   Court to accept a C plea for the ten years concurrent time  
8                   and unless the Court needs more on that, I won't -- all --  
9                   all of my argument will be based on the Four ninety-six.

10                  THE COURT: I don't think I do, and I really  
11                  understand Ms. Chavar's argument with respect to minimal or  
12                  minor role to be directed to the Four ninety-six conspiracy.  
13                  Correct?

14                  MS. CHAVAR: Absolutely.

15                  THE COURT: Right. Okay.

16                  MR. ECKERT: Okay. Very well.

17                  THE COURT: That's what I understood --

18                  MS. CHAVAR: Yes, and -- and we're not all  
19                  contesting --

20                  MR. ECKERT: Sure.

21                  MS. CHAVAR: -- the ten-year C plea.

22                  THE COURT: Right. Yeah.

23                  MR. ECKERT: Okay.

24                  THE COURT: And -- and so we're doing some back  
25                  and forth in -- with respect to the objections, but I

1 thought your argument was really as to Four ninety-six and  
2 so by all means --

3 MS. CHAVAR: Absolutely correct.

4 THE COURT: -- yeah, address that --

5 MR. ECKERT: Okay.

6 MS. CHAVAR: Thank you.

7 THE COURT: -- Mr. Eckert.

8 MR. ECKERT: Certainly, Your Honor. So it's --  
9 it's certainly true that the way evidence came out, of  
10 course there was a wire on Church, so a lot of the evidence  
11 against Mr. Coles is -- yes, a lot of it is Church and Coles  
12 talking, but a lot of it was really Church and Womack  
13 talking about Coles. That's how we learned about the email  
14 first. That's how -- before the first calls that mentioned  
15 Coles aren't really with Coles, but it's important because  
16 it shows that he was involved at the beginning. He was  
17 involved in the planning stages, and in fact, he's the one  
18 that had the prior relationship with Mr. (unintelligible).  
19 I mean certainly Mr. Womack did too clearly, but this --  
20 this instance does not appear to be the first time that Mr.  
21 Coles and Daniel had ever communicated.

22 In fact, he's the one that had the separate phone  
23 number, you know, going real quick to the end, if we  
24 remember, one of the last calls when Daniel's not calling  
25 him back, Coles says to Church oh no, I have this number and

1 Church says oh no, well, wait I had a different number for  
2 Daniel, so clearly there's communications happening again,  
3 during the entire course of the conspiracy between the  
4 defendant and Daniel. Not only that, of course, there's the  
5 emails. I'll get to the specifics of that in a second, but  
6 clearly there's -- at one point, Mr. Coles is on the wire  
7 with Church scrolling through his emails with Daniel. This  
8 is not a person who is kind of in it or maybe in it or in it  
9 a lot less. The (unintelligible) scenario where -- where he  
10 was going to get a much lesser amount as the Court found.  
11 That's not what this --.

12 THE COURT: Are you using email and text message  
13 interchangeably here?

14 MR. ECKERT: Yes. I'm sorry.

15 THE COURT: All right.

16 MR. ECKERT: What I mean is -- is things that are  
17 different from a phone call --

18 THE COURT: All right.

19 MR. ECKERT: -- and -- and I think they were  
20 referred to by Mr. Coles in talking to Mr. Church on the  
21 wire, but as well as Church and Womack on the wire talking  
22 about Coles other way to communicate with the --

23 THE COURT: With Daniel.

24 MR. ECKERT: -- Mexican source or -- or Daniel.

25 So -- in fact, if we look at on January 27th which

1 again is in the beginning -- towards the beginning stages of  
2 the conspiracy, Church told Womack, Diaz [phonetic spelling]  
3 just called me saying you were going to text him, call me  
4 and have him call me indicating that Coles was going to have  
5 Daniel call Church.

6 Again, indicating that even though a lot of the  
7 evidence is coming from Church and Womack, even on January  
8 27th, Coles is still independently reaching out to Daniel  
9 and independently -- not independently, but on his own calls  
10 or texts or emails. We don't necessarily have the full  
11 wording of, but we know that he's part and parcel of the  
12 effort to get the drugs up to Chester.

13 Defendant Coles, on January 29th, calls Church, he  
14 hitting me like crazy too indicating that Daniel had been  
15 calling him as well. February 1, 2014 this is -- one of the  
16 things that the defense makes -- I think makes a lot of hay  
17 about in our sentencing memo is the way that Church refers  
18 to Coles at one point as the bull. He also repeatedly  
19 refers to Daniel as the bull. I'm not here to discern the  
20 -- with precision what was in Church's mind, but the point  
21 is he calls people bull throughout the wire. He referred to  
22 the defendant as the bull or he referred to Daniel as the  
23 bull. It's a term he uses. It does not mean a young bull.  
24 Certainly, Mr. Coles is younger than Mr. Church. We would  
25 certainly concede that, but it's not in the sense of this is

1 some eighteen-year-old or nineteen-year-old. Someone who is  
2 under my wing. This is just the way that Mr. Church talked  
3 on the wire.

4 And I say that because on February 1st, Church  
5 tells Womack, tells Daz, meaning Coles, to hit the bull  
6 which was to call Daniel and again on February 3rd, D-rock  
7 meaning Womack indicates that he had already shown Church  
8 the information from Daniel. Defendant Coles said that he  
9 had emailed Daniel telling him to call Church. Again, so I  
10 say these dates only because I think it's important when  
11 assessing minimal role especially in a case like this where  
12 we have well, Church is on the wire and maybe he had a  
13 hundred calls and Coles only had fifteen calls. Well,  
14 therefore, Church must be more in it than Coles. I think  
15 when you actually break down the dates from the 27th through  
16 February, you see that even though we don't necessarily have  
17 the precise wording of Coles, he's certainly in the  
18 conspiracy and he's in it just as much as Womack is.

19 Your Honor, if I may just have one second?

20 THE COURT: All the time you need, Mr. Eckert.

21 MR. ECKERT: Thank you. So I think that  
22 essentially concludes the argument on the minimal role. On  
23 -- on the drug amount, to the extent the defense makes  
24 arguments to the Court about well, it's not really fifteen  
25 to fifty kilograms and the offense level should be lower, I

1       would just reference at one point, Daniel on the wire says  
2       eighteen to twenty pieces which the agents testified  
3       referred to kilograms. We would submit that that's  
4       certainly sufficient evidence for the Court to conclude that  
5       the amount should be -- at one point Daniel actually  
6       mentions that he has thirty kilograms, but he says later  
7       that eighteen to twenty were contemplated by this deal. We  
8       would submit to the Court that that's certainly sufficient  
9       evidence to prove by a preponderance that eighteen to twenty  
10       was the amount and the guidelines should be based on -- the  
11       guideline calculations should be based on that amount.

12                   Real quick, Your Honor, I just want to mention the  
13       -- the first setback only to put a couple of things on the  
14       record. Certainly, we -- we withdraw the Eight fifty-one  
15       and the mandatory in this case is ten years. I only note  
16       that he -- the defendant really receives the benefit of  
17       timing. Had this case arisen now, certainly the -- the  
18       state sentence he did would be a predicate qualifying  
19       offense under the first set back. Now the mandatory would  
20       only be fifteen if he was indicted today. It would not be  
21       -- it would go from twenty down to fifteen, but he really  
22       does receive a great benefit from that act in that his  
23       mandatory goes from twenty years to ten years because we did  
24       not plead the Apprendi facts of his incarceration in the  
25       indictment. I understand the Court is well familiar with

1 that. I don't mean to belabor that -- belabor that --.

2 THE COURT: That's important for the record that  
3 we acknowledge that.

4 MR. ECKERT: I appreciate that, Your Honor. So  
5 I'll conclude, Your Honor, just with a couple of things  
6 about the background of Mr. Coles, which I think lend itself  
7 to a sentence that approaches the guideline range. You have  
8 a gentleman who at eighteen has a first felony for  
9 corrupting the morals of a child. At nineteen, has another  
10 misdemeanor. At twenty, is charged and convicted of fleeing  
11 which in the grand scheme of things we might look at and say  
12 well, that's not the world's greatest offense, but it  
13 indicates that he does not follow the directions of law  
14 enforcement and he is not willing to conform to the rules  
15 that we have in society.

16 At twenty-one, he picks up his first felony drug  
17 offense. He gets a county sentence. He's certainly  
18 afforded a break at that point even though it's not his  
19 first contact with the justice system and I'm not -- and  
20 that makes sense, he's twenty-one years old. It's a small  
21 amount of drugs. He -- he absolutely deserves a county  
22 sentence of eleven and a half to twenty-three. Then at  
23 twenty-four, he gets his first concealed weapon offense  
24 which is important because then again at twenty-six, his  
25 second felony drug offense involves a firearm and it's a

1 gradual level of not just conduct, but the sentences aren't  
2 -- he's not getting the message.

3 At that point, he does his first state time and he  
4 gets thirty to sixty months state time and he comes out.  
5 He's on probation. He gets misdemeanors -- two misdemeanors  
6 at age thirty-one and at age thirty-two is arrested in this  
7 case and now he's looking at significant federal time.

8 Your -- Your Honor, based on that, a significant  
9 sentence is absolutely warranted in this case based on his  
10 conduct, based on the involvement that he had in the  
11 conspiracy, and we ask the Court to impose the low end of  
12 the guidelines. Thank you for your time.

13 THE COURT: All right. Thank you, Mr. Eckert. I  
14 really neglected to give this proper context as I was  
15 setting the stage earlier, so let me do that now and go back  
16 to the Pre-sentence Investigation Report.

17 First, with respect to the factual findings, I'll  
18 adopt those as the findings of the Court subject of course  
19 to argument, but do we agree that as calculated and again,  
20 subject to Ms. Chavar saying it should be calculated  
21 differently, that the offense level was thirty-seven and  
22 that the criminal history category is six.

23 MR. ECKERT: I concur with that, Your Honor.

24 MS. CHAVAR: Yes, subject to the --

25 THE COURT: Subject to argument.

1 MS. CHAVAR: -- exceptions.

2 THE COURT: Right. Right. Which would yield a  
3 guideline range of three hundred and sixty months to life,  
4 unless Ms. Chavar were to persuade me to in some way change  
5 the calculation. Do we agree on that?

6 MR. ECKERT: I do, Your Honor.

7 MS. CHAVAR: Yes, Your Honor.

8 THE COURT: All right. I -- I neglected --

9 MR. ECKERT: Sure.

10 THE COURT: -- to just put that in context. We  
11 know what we're talking about. Let the record be clear so  
12 that there's no ambiguity. With that, Ms. Chavar, whenever  
13 you're ready and you can address the Court from there, the  
14 podium, wherever you're most comfortable.

15 MS. CHAVAR: I would like to approach.

16 THE COURT: Wherever you'd like, Counsel.

17 MS. CHAVAR: Thank you. I have a few things to  
18 bring with me.

19 THE COURT: Take your time. Regrettably, our  
20 podiums have not caught up to the digital age, so --.

21 MS. CHAVAR: If I don't have it in front of me, I  
22 might forget. Okay. So I think you want me to just start  
23 and weave the arguments in as I --

24 THE COURT: However -- however you would like to --

25 -

1 MS. CHAVAR: -- go?

2 THE COURT: -- proceed, Counsel.

3 MS. CHAVAR: Okay. So I like starting from the  
4 beginning. You know Mr. Coles is not very similar to most  
5 of the defendants that end up in this courthouse on drug  
6 trafficking charges.

7 He didn't grow up not knowing where his next meal  
8 was going to come. They always had electricity and water.  
9 He got clean clothes. He had new clothes. You know so on  
10 the surface it seems like everything was fine for him and  
11 there wasn't really any reason that he needed to do this.

12 But his earliest memories of his mother and I mean  
13 no disrespect to her and -- and nor does her son and -- and  
14 Your Honor, at this time, his cousin Donna is in the room  
15 and at some point his uncle who went to move the car will be  
16 --

17 THE COURT: Is -- is that --

18 MS. CHAVAR: Yes.

19 THE COURT: -- Mr. Coles' uncle?

20 MS. CHAVAR: Okay. James.

21 THE COURT: Good morning, sir.

22 MR. JAMES COLES: Good morning.

23 MS. CHAVAR: The house was like a party house the  
24 minute you came home from work on Friday nights. There's no  
25 dispute that she worked hard. Everything he had, all of

1                   those comforts I just said, she provided singularly. His  
2                   father was a heroin addict. Never knew him. Knew who he  
3                   was but didn't know him and the house was literally a  
4                   twenty-four seven party until work on Monday.

5                   At five years old, he had an aunt that gave him a  
6                   line of cocaine. After a while, you grow up with that at  
7                   that young of an age, you -- you're sort of desensitized to  
8                   it. You don't really understand that it's bad behavior  
9                   because his mother is or was otherwise very responsible  
10                   until he got to middle school and other people were aware.

11                   He lived in the same neighborhood, same house  
12                   pretty much all his life, and people talk so the children  
13                   would hear it from the parents and don't want you at that  
14                   house on weekends, I don't know what's going on there, and  
15                   then he would be teased because his mother was a cocaine  
16                   addict and it was known and it was a difficult thing for  
17                   him. He is very prideful. Criticisms are -- he has a hard  
18                   time hearing as a criticism. It's more I think an issue of  
19                   low self-esteem and that -- facing that at school, he didn't  
20                   really want to go anymore, but he kept going while he was  
21                   smoking pot because somebody else at one of those parties  
22                   had introduced him to that and told him it'd be easier to  
23                   get through school and other things and he started drinking  
24                   also around that time and he has, and he knows this, he has  
25                   an alcohol -- he has a problem with alcohol. He's an

1                   alcoholic and he needs help and he said that several times.

2                   Just before he went in, he was doing Percocet  
3                   daily because that sort of helps you keep drinking, so as  
4                   part of my sentencing request, I am going to ask for  
5                   treatment for him.

6                   By the time though that he was fourteen to fifteen  
7                   years old, he was a very good athlete and it was, you know,  
8                   a reason that he would go to school. He was apparently very  
9                   good in -- he'd -- all -- for some reason, it seems like  
10                   children, especially when they're growing up -- I don't mean  
11                   to be genderist, especially boys, they really want their  
12                   family to see them play a sport. I raised a boy. It meant  
13                   everything to him that I was at every snowboarding  
14                   competition because that's what he did. Tonight, I'm going  
15                   -- my nephew is playing in the Delaware Blue/Gold game. I  
16                   don't know if Your Honor is familiar. It's a huge honor.  
17                   It has to do with the Delaware Disabilities Association and  
18                   it's all stars in academics from the state. He is more  
19                   excited that all of his aunts and uncles and any of the  
20                   cousins that could come into town are going to watch him  
21                   tonight than he is at playing at the University of Delaware  
22                   Stadium.

23                   Nobody ever came to see him play, ever for  
24                   anything. That sounds silly like oh, poor you, you know, no  
25                   one comes to see you play. It's a big deal to young men, to

1 young women, and I think it was even harder for him because  
2 the reason why his mother was never there was because she  
3 was partying at home on the weekends and then Donald Womack  
4 started coming to the games and cheering him on, bringing  
5 groups of people with him.

6 He refers to that in the Pre-sentence Report when  
7 he says only the drug dealers would be there to cheer me on  
8 and Donald Womack was there after the game with a soda,  
9 something to eat, talk to him about how he played, give him  
10 some pointers. He took him under his wing and this was a  
11 kid that really wanted a father and then by the time he was  
12 fifteen years old, Womack had him selling drugs for him and  
13 that went on.

14 You know the criminal history is clear. There  
15 are, let me pull up my notes on that if you'll give me a  
16 minute, ten criminal history points, pretty much three  
17 offenses. The two possessions with intent to distribute and  
18 a corrupting a minor which is not a felony charge. The  
19 other charges were dropped. He had a six- to twenty-three-  
20 month sentence on that. I think he did not quite two months  
21 in. In 2004 when he was twenty-one, he had a possession  
22 with intent to distribute, eleven and a half to twenty-three  
23 months and that was for selling point forty-seven grams and  
24 no notation of finding any other quantity on him at that  
25 time or a gun. So that's one half of the -- the two

1 predicates that increase him five levels. It's a prior  
2 where he did seven months in. It seems disproportionate to  
3 me that an offense that you do seven months for is going to  
4 increase you that many levels.

5 We do not dispute that the second possession with  
6 intent to distribute is a qualifying predicate nor do we say  
7 that it should not be. But for other reasons, I want to  
8 note he did eighteen months on that. Up until now, the most  
9 time he ever spent -- no, I'm sorry, Your Honor. I  
10 misspoke. He did twenty-four months in on that. That was  
11 the most time he ever did in jail until now. I think he's  
12 about five years, maybe a little more in now. I disagree  
13 with one of -- well, with a few of Mr. Eckert's statements  
14 of course. I do think he's capable of following the rules.  
15 I do think he has and has shown some respect for law  
16 enforcement because he's never violated his paroles.

17 He was released in 2006 -- I'm sorry he was  
18 released in 2009 on the second possession with intent to  
19 distribute and was discharged -- the sentence was discharged  
20 in 2012 with no violations. Same with the gun charge which  
21 gave him one criminal history point, two years suspended, no  
22 violations. The first PWID, no violations. PWID, I  
23 apologize, possession with intent, no violations on release,  
24 so he -- that's demonstrated ability to follow the law and  
25 that's demonstrated respect for the law.

1                   He tells me that Womack, until he -- until -- from  
2 my understanding, Donald Womack went in on a state sentence  
3 I believe when he was around twenty -- twenty-one years old.  
4 Up until that time, he was pretty much like his father. He  
5 taught him how to drive. Let him drive his car. Did all  
6 the things that a guy wants their father to do for him and  
7 then when he came out, he sought Nathaniel out and wanted to  
8 pick up where he left off. I understand too that Womack is  
9 not really the kind of person that you easily say no to.

10                  If you look at the offense conduct in Five one  
11 six, the conduct that we entered a C plea on, he's talking  
12 to Dorsey. I think it's characterized by -- as getting  
13 advice from Dorsey how to have his business, talking to  
14 Womack. Of course, it demonstrates what the Government  
15 offers it too, that he was involved in selling drugs, but it  
16 also corroborates he is really kind of just getting into  
17 that.

18                  I think my argument to some extent was  
19 misunderstood on the minimal role for the Four ninety-six  
20 conduct. We don't argue that he was part of that  
21 conspiracy. That's -- that's not the argument and he  
22 doesn't have to be not a part of the conspiracy to get  
23 minimal role reduction. In fact, he has to be part of the  
24 conduct. My understanding is that for that to apply -- for  
25 that reduction to apply, the individual has to be a

1 participant in offense conduct with other participants. To  
2 be less culpable doesn't mean you're backing off of the  
3 conspiracy. That's not the definition of less culpable as  
4 far as my assertion for why he is deserving of that  
5 reduction.

6 If you just -- if you think about it whenever you  
7 have a group of people working towards something, there's  
8 pretty much always a leader. Pretty much always somebody  
9 sort of secondhand there to the leader and then there's the  
10 soldiers, the followers, you know, taking the rule -- the  
11 orders and it's to that that I speak. That of those four,  
12 his conduct was far less. I tried to break it down as  
13 clearly as I could in my memo and I -- I pointed to the  
14 Government, okay, the Government's evidence discussing what  
15 his role was. I think that we get about second day in,  
16 third day in. There's pretty much no discussion of -- of  
17 anything that Mr. Coles had done then. There was one text  
18 exchange with Daniel.

19 Then when you get to the January 29th to the  
20 February 4th, there's a text that Daniel sent him which is  
21 curious because he -- it's right after Daniel gets the three  
22 hundred dollars and Church and Pinkney, who he had been  
23 talking with all the time, trying to reach him and he texts  
24 Daniel -- I mean he texts Nathaniel to say I'll be in  
25 Houston tomorrow.

1                   Now the Government lays out that Daniel was told  
2                   -- clearly told your -- he's not in this. I'm going to see  
3                   you in Houston. Church gets annoyed because Daniel says to  
4                   him I got a text from the other cousin. If I could  
5                   hopefully find it quickly.

6                   Church goes no, there is no other cousin. This is  
7                   me. You're dealing with me, so it's interesting then that  
8                   Daniel reached out to Coles to say I'll be in Houston  
9                   tomorrow after being told he's not the one going. He's not  
10                   part of it and I think that does sort of militate that  
11                   there's probably never any intention of selling any drugs to  
12                   them. I think it also indicates that (unintelligible) was  
13                   seen as low level at least to Daniel.

14                   There was days of figuring out when they could  
15                   pick up the R.V. What route they would take to get to  
16                   Houston. All those discussions. Pinkney and Church. For  
17                   purposes of this guideline reduction, those are the things  
18                   you look to. Not whether he was backing away or not really  
19                   part of the conspiracy. He was part of the conspiracy, but  
20                   he wasn't part of the planning and he wasn't calling any  
21                   shots.

22                   I'm going to flip ahead to Amendment Seven ninety-  
23                   four, two three B one point two with the list of factors  
24                   which I -- I -- I didn't go into any great discussion in my  
25                   sentencing memo, but if you look at the Headley factors,

1       United States vs Headley, which this circuit for many years  
2       has used to determine whether or not an individual earned  
3       that reduction. The nature of the defendant's relationship  
4       to the other participants. I think Seven ninety-four -- the  
5       Amendment Seven ninety-four just rewords that a little bit.  
6       It looks to me very much like the Headley factors were sort  
7       of adopted by Amendment Seven ninety-four and then expanded  
8       upon, so I'm just going to discuss the Seven ninety-four  
9       factors and Your Honor could ask me if -- if I haven't  
10       covered everything.

11 The amendment was drafted and this is one of the  
12 very few times that I'm aware having been working with the  
13 Federal Sentencing Guidelines since 1993 that the Sentencing  
14 Commission said oh we need to do something because this is  
15 not being applied as much as we intended it to be applied  
16 which makes sense because whenever there's a group, there is  
17 a leader. I'm sure Your Honor has seen in many Pre-sentence  
18 Reports when there's a conspiracy, a leadership role  
19 enhancement, so there's got to be somebody that played a  
20 minimal role.

Amendment Seven ninety-four says to look to the degree to which Mr. Coles understood the scope and structure of the criminal activity. All right. So that one's like a little tough to decipher exactly what scope, what criminal activity. Okay. So to what degree did he understand this?

1        Well, I mean he certainly understood that they were trying  
2        to purchase some drugs. Okay. That's the base. That's,  
3        you know, basic concept of what they were going for. So,  
4        you know, what did he -- what did he know after that? He  
5        knew that they were going to meet in Houston. He heard  
6        that. Did he know the route they were taking? Did he know  
7        why they were taking an RV? Where they were getting the  
8        R.V. from? What they paid for the R.V.? Did he know any of  
9        that? I mean these are the only other factors there really  
10       are in this -- this scheme or -- or plan to purchase drugs.

11                   Church and Pinkney have a conversation  
12        specifically about the route they would take that would make  
13        it least likely for them to encounter law enforcement. How  
14        would they know that unless they did it before? I was  
15        surprised to hear the Government say that there was some  
16        indication that Coles had dealt with Daniel before. There  
17        is no evidence -- nothing I've ever seen. As Your Honor may  
18        recall that as part of one of the plea agreements, there was  
19        an appellate waiver included and in order to counsel him  
20        accordingly, I reviewed. I read those trial transcripts. I  
21        looked at the evidence on that case. I wasn't there. I  
22        didn't try it, but I know the evidence. I don't see  
23        anything -- any intel that he ever went to Houston before.

24                   So, you know, I think he reaches that factor. Not  
25        that he did not know anything, that's not the test. He knew

1 less than Church and Pinkney knew. The degree to which he  
2 participated in the planning and organizing, again, he  
3 didn't map out the route. You know I'm saying the same --  
4 I'm pointing to the same facts pretty much over and over  
5 again because, you know, it wasn't a very complicated  
6 scheme, but the guideline doesn't say that it has to be  
7 complicated to get this reduction. It says look at the  
8 conduct that you're being sentenced on and see if this  
9 individual did less. They use the word less culpable. It's  
10 really did less, played a minor role, less culpable.

11 In fact, the second time he texted Daniel or  
12 emailed Daniel, if there was some sort of an exchange of  
13 that term in the -- in the Government's facts, that was at  
14 Church's behest when he couldn't get in touch with him. He  
15 said to Womack, can you have the boy reach out because they  
16 were doing anything at that point to try to get ahold of  
17 this guy. I do disagree with the Government's -- I don't  
18 know what to -- the characterization of the bull or the boy  
19 or young bull. I -- I -- if it is a term that Church uses  
20 all the time, how come he never calls Pinkney that? How  
21 come he never calls Womack that? He only calls Coles that  
22 in everything I've listened to. I don't remember hearing  
23 him call Daniel that, but I don't dispute, you know, that  
24 the Government says he did. I just didn't hear that.

25 It is a specific term. It is a specific

1 designation to somebody who is part of a group. I don't  
2 think I have ever, ever in my hours and hours of interviews  
3 with clients ever heard one of them say oh no it's just a  
4 name. It has a meaning. It indicates a designation. In  
5 fact, most of the time, why you're young bull? A lot of the  
6 people above you, they don't even know your name. They  
7 don't bother because at that point you're a young bull. See  
8 if you wear this out if you work through this. I do think  
9 it's significant that that's how Coles was referred to.  
10 Everybody knew who -- who Church was talking about. Pinkney  
11 sort of refers to him that way at one point. It's clearly  
12 an indication that of the four of them, he was beneath them.  
13 That was his designation.

14 Did he exercise decision making authority or  
15 influence the exercise of decision making authority? Well,  
16 young bulls don't have to do that. That's all I'm saying on  
17 that and I don't think the evidence shows that either. I  
18 didn't see one time that he made a decision on anything.  
19 The nature and extent of Mr. Coles' participation in the  
20 commission of the -- would be drug deal, the acts he  
21 performed, responsibility and discretion of those acts. He  
22 made two text exchanges and he received one and he was in  
23 the room too when they talked about it.

24 Again, it's not being offered to say he wasn't  
25 really part of the conspiracy. Again, he was. He admits

1 that, but for this guideline, you have to look at what he  
2 did versus the others. Well, three contacts with Daniel as  
3 opposed to all the other calls made by Church and Pinkney  
4 and -- and -- which is his participation in the commission  
5 and whether or not he had the responsibility and discretion  
6 in performing those acts, not from what I could see on the  
7 record. He was told see if you can get ahold of -- of -- of  
8 Daniel. Find out what's going on. That's what he did. He  
9 didn't talk price. He didn't talk quantity. He didn't talk  
10 specifics, so obviously he didn't have the discretion to  
11 stretch that role any further than what he was told to do  
12 and that's what he did. Not to say he was only acting on  
13 orders and didn't want to do it. That's not what I'm  
14 saying.

15 The guideline says to evaluate whether he's earned  
16 this reduction, you have to look at whether he had any  
17 discretion in the role he played. I submit he did not, and  
18 I point specifically to that text that he was told to send  
19 and why and he didn't go beyond that scope. Degree to which  
20 he stood to benefit from the deal. I'm still trying to  
21 figure out what any of them really were going to benefit  
22 from this deal and if it was going to go through. I don't  
23 know how you can agree to buy, I don't know, however many  
24 kilograms of cocaine when you don't even know what the price  
25 is per kilogram -- what the price is per quantity. I mean

1           don't know that I've ever listened to a wire where they're  
2           discussing a deal and there isn't any discussion of price.  
3           How was there ever even a meeting of the minds?

4           Not only was there not any discussion of price,  
5           how is it being split up? I never heard any of those. I  
6           mean were they getting it? Was Church just going to come  
7           back and -- and keep it himself and sell it? Was it going  
8           to be split four ways? Again, I don't think young bull gets  
9           a quarter if it is being split. More likely, I can't even  
10          speak to how that was because there's nothing in the record  
11          to indicate how anybody -- what benefit he would have gotten  
12          from that.

13          I guess this is as good a time as any to talk  
14          about the quantity that's applied. It's eighteen to twenty  
15          kilograms that I agree with Mr. Eckert that I think he said  
16          at one point Daniel says eighteen to twenty. At another  
17          point Daniel says oh, we got sixty kilograms a couple miles  
18          downstate or down -- start out saying something like  
19          fifteen. It's never agreed upon. The jury found five  
20          kilograms. That's the only definite in this whole equation.  
21          I would think that should be guideline -- the base offense  
22          level because there's just no proof beyond that. There  
23          certainly is no proof on what would reasonably be  
24          foreseeable to Mr. Coles out of that quantity.

25          Your Honor has my sentencing memo where I

1 discussed the Collata factors and I don't know how to  
2 elaborate on that. It's very clear that the base offense  
3 level for an individual involved in a conspiracy have to  
4 look at what was reasonable foreseeable quantity to that  
5 individual. There's no discussion of that in the Pre-  
6 sentence Report and I understand why. What would you base  
7 it on? Not a lot of the types of facts that we would need,  
8 you know, to -- to make the kind of decision that means  
9 years in jail for him. These are not the kind of decisions  
10 that you just estimate because these are life decisions for  
11 him.

12 I played around with the guidelines a lot trying  
13 to figure out where the many ways his guidelines could come  
14 out, so if he has -- okay. If he wasn't a career offender,  
15 we start at thirty-two -- I'm going to step back, Your  
16 Honor, and get my guideline book if that's okay?

17 THE COURT: By all means.

18 MS. CHAVAR: Thank you. Okay. So before the five  
19 levels, he's thirty-two -- five levels, I'm sorry, for the  
20 Career Offender Provision. He's at a level thirty-two. His  
21 criminal history category is five and that would make him  
22 twenty-six -- well, if he were to get the minimal role  
23 deduction four levels down, if he were to get the acceptance  
24 of responsibility reduction -- I apologize, Your Honor. I  
25 should have addressed that before I moved on to the various

1       -- the variance discussion I've been having, then he would  
2       be down to twenty-six with a criminal history category of  
3       five, he'd be at a hundred and ten to a hundred and thirty-  
4       seven months. That's nine to eleven and a half years.

5                   With Career Offender, with those six level  
6       reductions, he's at fifteen and a half to nineteen and a  
7       half years. At -- at thirty-seven, six, thirty years to  
8       life. It's an enormous jump which is triggered by the --  
9       the two and only two prior possession with intent to  
10      distribute that he has. I'm sure Your Honor has had career  
11      offenders with more than just two. You could sort of just  
12      pick from their criminal history. The criminal history is  
13      what it is, but it is three felonies.

14                  THE COURT: What is the background of the two  
15      firearms offenses here?

16                  MS. CHAVAR: Excuse me?

17                  THE COURT: I said there is the background of the  
18      two firearms offenses?

19                  MS. CHAVAR: I think I include that, Your Honor.  
20      Am I missing something?

21                  THE COURT: No, I'm just saying that --

22                  MS. CHAVAR: Yeah.

23                  THE COURT: -- that when you talk about what  
24      weight should be given -- not drug weight, but what  
25      significance I should attach to one of the two offenses --

1       one of the two possession with intent to distribute  
2       offenses. I do look at that in part against the entire  
3       record and -- and one of the things in the record which is  
4       concerning are the two firearms offenses.

5                   MS. CHAVAR: Firearms offenses are concerning. We  
6       didn't -- didn't dispute that that's clearly a career  
7       offender predicate. Clearly. And I don't assert that --  
8       that the Career Offender Provision does not fit under the  
9       guidelines. It does, you know, the guideline says if you  
10      have this, you are a career offender. I'm addressing these  
11      factors more deeply here. I'd offer that it's a basis for a  
12      variance. Five levels is a lot of time. Now there's  
13      incremental punishment to consider here. Twenty-four months  
14      is the most time he ever spent in jail, the guidelines would  
15      have him jump to thirty now. Donald Womack was recently  
16      sentenced as you're well aware, fifteen years I think?

17                  THE COURT: It was an eighteen year sentence where  
18       he was the beneficiary of the second step back, but -- first  
19       step back, but by virtue of the fact that he had been in  
20       federal custody for eleven years and so the -- that -- there  
21       were unique factors at play there that resulted in that  
22       specific sentence.

23                  MS. CHAVAR: And there always -- look, every --  
24       you -- you take every defendant as you find them and there  
25       are these different factors, but, you know, sometimes the

1 factors come out arbitrary.

2 THE COURT: I agree with that.

3 MS. CHAVAR: Mr. Womack did eleven years. He  
4 didn't. It had to be a pretty serious offense to do eleven  
5 years. It just seems to me that it's -- it's -- to sentence  
6 a thirty-some year old man to thirty years for conduct that  
7 serious. It's very serious. I'm not disputing that. I'm  
8 just disputing thirty year serious.

9 THE COURT: I'm mindful of the relationship  
10 between Mr. Womack and Mr. Coles. I'm mindful of the  
11 susceptibility he would have had at a certain age --

12 MS. CHAVAR: Uh-huh.

13 THE COURT: -- and certainly all those things will  
14 be considered.

15 MS. CHAVAR: He had a period of time before Womack  
16 when -- when he got out of jail following the second  
17 possession with intent to distribute before Womack was  
18 released. He worked for Tastykake. He worked for the  
19 salon. Your Honor has the letters. The -- the gentleman  
20 that he worked for at the salon would hire him back. He was  
21 very good. He's -- he's voiced many times while he's been  
22 in custody, while I was representing him, plans that he has  
23 for his release. I think that remorse is shown by the way  
24 an individual serves his time. He has no write offs at the  
25 federal detention center. I mean that's almost -- that's

1 very difficult to do. I mean it sounds like it shouldn't  
2 be, like you just follow the rules like it can't be that  
3 difficult, but there's things that happen that's not always  
4 within your control.

5 There's -- it's -- it is to his credit that he has  
6 had no writeups, no disciplinary action, nothing for the  
7 five years he's been there. He's just trying to do his time  
8 and move forward and get back to his daughter who he has  
9 maintained a very good relationship with and speaks with  
10 often.

11 Before he went to jail, you have these letters.  
12 Many people speak to the presence he was as his father -- as  
13 a father. You know it's almost like when you read these  
14 letters it's almost like two different people. You know he  
15 doesn't really sound like -- the person here doesn't really  
16 sound like the person on that wire sometimes and with all  
17 due respect to my client and he knows this, he's not always  
18 so easy to get along with. He has a little bit of a  
19 contrary nature at times when he's adamant about something.

20 He wants to continue training in barbering and  
21 he'd like to get some culinary skills, so I am hopeful that  
22 if he is designated, I know hopefully close by Fort Dix so  
23 his mother can see him, they do have training there for  
24 various vocations along with the drug rehabilitation program  
25 which I think he very much needs. He was not always the

1                   young bull for Womack selling drugs. You know he was the --  
2                   the gentleman who dug out the neighbor's cars when it  
3                   snowed. He was the person that treated everybody with equal  
4                   courtesy and would smile and say hello every time he saw me  
5                   respectfully, and he was always available to assist in  
6                   helping anyone in need of driving elderly people to the  
7                   markets and various stores. You know that's a good  
8                   challenge in some neighborhoods especially when you grow  
9                   older and don't get around as easily, carrying those bags  
10                   back, that is a -- a considerable kindness.

11                   He was somebody that -- that was thought to never  
12                   be disrespectful towards family or friends or anyone.  
13                   Nathaniel would knock on elderly doors and ask if they  
14                   needed a ride. He took my mother to her doctor's  
15                   appointments.

16                   THE COURT: And -- and I have reviewed all of  
17                   those letters.

18                   MS. CHAVAR: Thank you.

19                   THE COURT: No, I assure you I have read each of  
20                   the letters individually.

21                   MS. CHAVAR: Then I'll leave it at that. You've  
22                   read it.

23                   THE COURT: And -- and they're part of my file  
24                   here on the bench.

25                   MS. CHAVAR: I -- so did he accept responsibility?

1        Does he earn those two points? I think the guidelines are  
2        clear that if you go to trial and you don't contest your  
3        conduct, if your defense is a legal one or the application  
4        of the statute, admittedly it was hard at times for me to  
5        decipher whether they -- whether it was an impossibility  
6        defense or a no contract. I -- I -- but clearly I think the  
7        argument was that yes, they did what they did, but it's not  
8        a crime because Daniel was fictitious and there was never  
9        going to be a deal. I think Your Honor sat before it. It's  
10       -- from -- from the closing statements as a whole, it seems  
11       that was the advanced argument. Right?

12                    THE COURT: Well, it -- it would --

13                    MS. CHAVAR: Yeah.

14                    THE COURT: -- it seemed to be advancing an  
15        exception to the law of conspiracy that the law does not  
16        recognize as an exception --

17                    MS. CHAVAR: Thanks.

18                    THE COURT: -- is how I -- how I took it.

19                    MS. CHAVAR: And like I said, it was difficult for  
20        me to decipher exactly, but I think what was clear was that  
21        they didn't -- I know -- Mr. Coles didn't contest his  
22        factual guilt. What else do you look to? Well, you look  
23        then to see if he made any pre-trial efforts. There was  
24        attempts at that.

25                    THE COURT: Right. And I -- and I think we've

1 established a record for that at side bar --

2 MS. CHAVAR: Very good.

6 MS. CHAVAR: No, I --

7 THE COURT: -- I'm -- I'm mindful --

8 MS. CHAVAR: -- think it was --.

9 THE COURT: -- of that record.

10 MS. CHAVAR: I'm fine with -- I think I mistook  
11 your direction on that. I'm going to just ask one moment  
12 with my client and then --.

13 THE COURT: Whatever time you need, Ms. Chavar.

14 MS. CHAVAR: Thank you. His mother is in the room  
15 today. I -- do you want to speak? I think you were  
16 undecided. If you wanted to speak to the judge, now would  
17 be your time to do that. Thank you, Your Honor.

18 THE COURT: Sure.

19 MS. CHAVAR: And my client most definitely wants  
20 to speak with you.

21 THE COURT: It's his right.

22 MS. CHAVAR: Okay.

23 THE COURT: Ma'am, please proceed that way.

24 MS. CHAVAR: I doubt anybody would speak as long  
25 as I did though. This is Nevada Coles.

1 MS. NEVADA COLES: Good morning, Your Honor.

2 THE COURT: Good morning again, Ms. Coles.

3 MS. NEVADA COLES: Good morning, Your Honor. I'm  
4 here to speak on my son's behalf. He's the only son that I  
5 have. I have two children, a daughter and my son and I'm  
6 here, Your Honor, to ask if you could show my son some  
7 leniency because it was difficult for us as I was trying to  
8 work hard to make it (unintelligible) so that they could  
9 have and the only thing where I think I failed them the most  
10 is that with him being the man that he is today, but I've  
11 tried to do everything humanly possible that I could to make  
12 life better for my children, but I couldn't make him a man  
13 and I know throughout the struggles of his life, he was more  
14 or less like my protector for me and my daughter.

15 He always looked out for us. He always like I  
16 been in and out of the hospital a lot with the conditions  
17 that I have since I retired from General Motors on  
18 disability and he helped me to get back and forth to my  
19 doctor's appointments. He helped me also to find a way to  
20 eat right so I can stay healthy and I'm not going to lie to  
21 you, Your Honor, since my son hasn't been in my life, it's  
22 been really hard and difficult for me to like want to stay  
23 up to like want to keep myself together, to like try to keep  
24 my mind right because it seems to me with him in here  
25 serving a sentence for time, I'm not so certain that

1 something is on the outside and he is a good person.

2 I haven't known him to bring any harm or will to  
3 anybody. He's always not only been there for me, but he's  
4 been there for his sister, his nieces, his nephew, and his  
5 great nieces, and mainly his daughter and as I proceed, Your  
6 Honor, I would like to read a letter that his daughter wrote

7 --

8 THE COURT: That -- that's fine, ma'am

9 MS. NEVADA COLES: -- to you. She says good  
10 morning. My name is Camilla McCready [phonetic spelling].  
11 I am thirteen years old and I am the daughter of Nathaniel  
12 Coles. I apologize I am not able to be here this morning,  
13 but being that I now live two hours away, also I do not want  
14 to see my father sentenced to something I may not like. I  
15 have decided to stay home and write this letter.

16 Let me -- let me start off by saying how great of  
17 a father Nathaniel is. He is caring, loving, grateful,  
18 funny, and just the best of the best. I have the best  
19 memories of my life with him such as going to eat -- going  
20 to eat out, shopping, family, cookouts, and even with having  
21 sleepovers with him. Also, we used to go pick up my god  
22 sisters and just go out to fun places. Also, I just wanted  
23 to let you know how I would feel if my father was taken away  
24 from me even longer than what he has already been. I am  
25 very smart. I try hard to make my father proud, but it is

1 very, very hard to do so without him not being able to be  
2 here with me.

3 My father is very over protective with me. He is  
4 very over protective with me too, but I wish he was here  
5 actually be able to protect me and watch me grow up and  
6 blossom into the smart, amazing, and beautiful young woman  
7 that I can possibly be, and guide me to do so as I ask that  
8 the judge may take this into consideration that Nathaniel  
9 Coles is a great person and how loved and (unintelligible)  
10 he is to all people including me. I hope you have a great  
11 day. Sincerely, Camilla McCready.

12 THE COURT: Thank you, ma'am.

13 MS. NEVADA COLES: Thank you, Your Honor.

14 MS. CHAVAR: She certainly does sound smart and to  
15 his benefit, he has often told me when I would see him of a  
16 recent call with her. I know that he -- he promotes her  
17 working hard in school and that's obvious that she has been  
18 and to be busy after school, so that she doesn't fall into  
19 bad ways. He's -- he's been a success at some things. He's  
20 an attentive, caring father who wants better for his  
21 daughter. He's shown he's able to hold a job and to perform  
22 well at that job. You have the letter from the employer.

23 Your Honor, I have these notes here. I'm jumping  
24 around a little because I forgot that -- to mention that  
25 Pinkney who testified at the trial had made statements that

1                   he didn't even know Coles until the night before the deal or  
2                   the night before they started to talk about going to Texas.  
3                   He says it a couple of times and I just submit that as, you  
4                   know, in furtherance that he was the nondescript young bull  
5                   for the most part.

6                   I -- I spoke to you at length and I'm going to  
7                   wrap it up now before you hear from Mr. Coles that my  
8                   sentencing memorandum, I had hoped to break it down where if  
9                   Your Honor were to reduce the guidelines as calculated in  
10                  the Pre-sentence Report, it comes down to thirty-one, six,  
11                  which is a guideline range of one eighty-eight to two  
12                  thirty-five and then I'd offer the variance in consideration  
13                  of the career offender application and the drug quantity and  
14                  there being no reasonably foreseeable quantity attributed to  
15                  him which the Collata court insists there must be and I ask  
16                  for a sentence less than fifteen years from that bottom of  
17                  that guidelines range from the Career Offender Provision and  
18                  then I looked to what his guidelines would be if he wasn't  
19                  given career offender and it came pretty close. It was  
20                  somewhere, if you combined those two, I could pull it up  
21                  again on my notes, but it was around like eleven to fourteen  
22                  years.

23                  You know which I offered to say that a sentence of  
24                  less than fifteen years is -- is not incongruent with really  
25                  the guidelines. He has the ten. That will run concurrent

1 with whatever Your Honor imposes. A sentence between ten  
2 and fifteen years is certainly sufficient punishment for  
3 this conduct where he never basically harmed anyone. It's  
4 certainly long enough for deterrents. He's already  
5 demonstrated deterrence by his behavior while incarcerated,  
6 the classes he took while he was at the federal detention  
7 center. That is -- Mr. Boyer did a very thorough job in the  
8 Pre-sentence Report and he lists them, and I don't remember  
9 the paragraph number off the -- I'm sorry, Mr. Boyer.

10 THE COURT: I'm familiar with the --

11 MS. CHAVAR: Yes, thank you.

12 THE COURT: -- background, Ms. Chavar. It should  
13 be obvious from some of my questions and comments.

14 MS. CHAVAR: Okay. And -- and his plans for  
15 moving forward. Rehabilitation. It's enough time to take  
16 up a trade while he's in custody and to get his drinking and  
17 drug use under control. For all these reasons that I've  
18 discussed here today and ask the Court to impose a sentence  
19 of less than fifteen years knowing it can't go below ten.  
20 There is a ten-year mandatory minimum and I'll bring Mr.  
21 Coles to the --.

22 THE COURT: Before you do --

23 MS. CHAVAR: Okay.

24 THE COURT: -- anything further, from the  
25 Government, Mr. Eckert?

1 MR. ECKERT: No, Your Honor. I've said my piece.  
2 Thank you.

5 MS. CHAVAR: Yes. May I --?

6 THE COURT: You may. You may --

7 MS. CHAVAR: I'm sorry.

THE COURT: -- have a moment to confer with him.

9 MS. CHAVAR: Your Honor, will you hear from his  
10 uncle?

11 THE COURT: I will.

12 MS. CHAVAR: Thank you.

13 THE COURT: Good morning, sir.

14 MR. JAMES COLES: Good morning, Your Honor. My  
15 name is James Coles. I am a union worker for forty years  
16 and that's my nephew and in doing work, they say safety  
17 first, you know, so when you say safety first, that's what  
18 they strive for, safety first and by me being a worker, I  
19 just come today to ask for mercy from the judge for my  
20 nephew being his stupidity -- his stupidity as far as  
21 following other peoples. You know what I mean? I've been  
22 his uncle. I watched him grow. I tried to teach him right.  
23 He -- where the government said that women didn't need a man  
24 in the house. They live in Section Eight and they took the  
25 father and put the responsibility on the fathers for child

1 support. I made it through child support.

2 Here I am as a man and I am the baby boy of twelve  
3 of my family and I made it. I made it to a point where I  
4 raised five daughters and they graduated from high school  
5 and I seen (unintelligible) high school and finished and I  
6 was there and they said I wasn't nothing from the beginning,  
7 but I was able to be there and see them prosper and here is  
8 my nephew. He's a conspiracy, so when do you say conspiracy  
9 starts? You know if he's following other people and he's  
10 influenced by them. See? He had influenced at his father.  
11 His mother worked at General Motors.

12 Here I am a man that they said would never be  
13 nothing and I raised five daughters and I don't owe the  
14 government any money and I'm just asking for you to have  
15 mercy on the kid that made the wrong decisions. He didn't  
16 kill anybody. He had guns. He been in jail. He didn't  
17 kill anybody. He followed the wrong people because the  
18 government wouldn't allow us to put a foot in their butt.  
19 Like when I grew up, I have uncles. If I got out of line,  
20 they put foot in my butt and I know not to do that, but by  
21 them saying you can't hit the kids and a woman can't raise a  
22 child. She can't raise a man because when a man becomes a  
23 man, he -- he acts out. You see what I'm saying?

24 And that's all he was dealt with and he didn't  
25 have a father in his life and -- and -- and the road that he

1 chose -- he chose the easy way because hard work does pay  
2 off. Believe me. I believe in that. I'm a statistic that  
3 it does work hard, and it pays off. I never been in a  
4 penitentiary. I never robbed nobody. You see what I'm  
5 saying?

6 THE COURT: That was before you were a union  
7 worker, you didn't know.

8 MR. JAMES COLES: Yes. I walked down the street  
9 and if the cops caught me asking for a P.P. number. I told  
10 them I don't know what a P.P. number is. I'm supposed to be  
11 a criminal, but here today I ask for mercy for a man that  
12 conspired to do something that he might not even know he was  
13 into.

14 THE COURT: I understand your position, sir.

15 MR. JAMES COLES: -- and that's all I ask, Your  
16 Honor.

17 THE COURT: Thank you.

18 MR. JAMES COLES: I appreciate it. Thank you.

19 THE COURT: Thank you, Mr. Coles.

20 MR. JAMES COLES: Thank you.

21 MS. CHAVAR: Thank you.

22 THE COURT: All right. Mr. Coles, this is your  
23 chance to be heard. No need to rise, sir. Just -- you can  
24 be -- stay seated and pull the microphone over closer to you  
25 if you would. Yes, sir. Go ahead.

1 MR. NATHANIEL COLES: First and foremost, Your  
2 Honor, I would like to apologize to you and this courtroom  
3 for the actions that caused me to be in front of you today  
4 and I also would like to take this time to apologize to my  
5 mother and my entire family for the embarrassment and the  
6 anguish that I have brought amongst them in the community  
7 that we live in for my -- for my reckless -- for my reckless  
8 actions that has me in this predicament that I put myself in  
9 today.

22 As soon as my sister -- as soon as my sister  
23 became of age, she became my primary babysitter while my mom  
24 would be at work at General Motors, the plant in New Castle,  
25 Delaware. My mom basically worked second shift so she would

1 leave once -- once my sister get out of school, my mom would  
2 be on her way out the door to work and my mother wouldn't  
3 return from work until probably about -- she would leave to  
4 go to work at probably about two thirty in the afternoon and  
5 she wouldn't return from work Monday through Friday until  
6 about one thirty, two o'clock in the morning, so therefore,  
7 I had to be with my sister twenty-four/seven. She had to  
8 take me everywhere whereas though as I got older -- my  
9 sister's name is Shauntay [phonetic spelling].

10 When I got older, people were calling me looking  
11 for Shauntay because I was always with her all the time, so  
12 I mean I didn't know which way to take it as either a  
13 compliment or if somebody was basically making fun of me,  
14 but other than that, growing up, I mean my sister was always  
15 doing hair, so when I was playing -- like when I was playing  
16 basketball from -- from the age of five up until I was  
17 twelve, being as though my mother working the hours that she  
18 work once she get off of work on -- she probably get paid  
19 Thursday night and once she get off of work at Friday, I  
20 mean my mother was -- was young raising two kids on her own.

21 She wanted to enjoy herself, so that's basically  
22 what she did, so on the mornings when I would have my games  
23 and my mother would basically be, you know, passed out from  
24 -- from the night before from pulling an all-nighter  
25 drinking and her and her friends would indulge in doing

1                   drugs and things of that nature. I mean she didn't know  
2                   that I knew what was going on, but I was a pretty smart kid,  
3                   so I actually knew what was going on when I would see a -- I  
4                   mean a bunch of other folks that was in the -- would be in  
5                   my mother's dining room all hours of the night passing  
6                   around, you know, rolled up dollar bills and with little  
7                   bags of things with white contents in it, so I actually knew  
8                   what it was, but I didn't know the exact (unintelligible).  
9                   I knew it was bad. I definitely didn't believe it was good.

10                  So as time went on, I mean as -- as you already  
11                  know, my father wasn't in my life. He was basically -- he  
12                  was out of my life since I was two years old and that was  
13                  due to him being addicted to heroin and him being in and out  
14                  of -- in and out of prison basically, so I never really had  
15                  a relationship with him, so as the time goes on of me  
16                  playing (unintelligible) basketball, I never had any  
17                  thorough support at that time. I mean like I said before,  
18                  my mother did what she could. She kept a roof over me and  
19                  my sister's head. She kept food on the table. She kept  
20                  clothes on our backs.

21                  But I still was missing that part that I needed  
22                  which was my father and my best friend that I had at the  
23                  time, his father was always in his life and he was always  
24                  around him, so that led me to feeling some type of  
25                  insecurity of well, why my dad's not around? Does my dad

1 actually want me? Is he ashamed of me? Why isn't he -- why  
2 -- why doesn't he take the time out to do this when I'm so  
3 good at basketball and this is my love, and this is my  
4 passion? Why isn't nobody here to -- to see me actually  
5 play?

6 So then at that time, that's when I come to meet  
7 Donald Womack. Excuse me. So me and Donald Womack, it was  
8 like -- honestly to give you an answer for it, it was like a  
9 breath of fresh air. It seemed as if he understood me. He  
10 cared and he showed me basically a -- a caring that no other  
11 man had basically showed me and it was like I just -- I just  
12 took to him as if he -- as if he was my father because I was  
13 allowed to do certain things. I mean he actually -- he  
14 actually tell me right from wrong, but he also would allow  
15 me to do things that I want to do as far as he would give me  
16 money. He would allow me to drive -- drive his vehicles or  
17 whatever and even though he had many other children, he  
18 still made me feel as though I was one of his. You know  
19 often times, he would tell me he looked at me as one of his  
20 own.

21 So as time went on, he -- he had -- once I had  
22 started -- once he had introduced me to selling drugs. He  
23 had went to prison and I believe he had returned -- returned  
24 back home in 1998, so when he returned back home in 1998,  
25 that's when I basically started selling -- selling drugs for

1 him, so at that time -- as that time goes on, he's still  
2 doing basically the same thing. He showing me the love that  
3 my father never showed me and, in all actuality, when my  
4 father did attempt to try to be a part of my life, it was as  
5 if who are you? This man -- this man over here has been  
6 there more than you have, and I basically showed more  
7 respect and love towards Donald Womack than I did to my own  
8 father when he -- when my father did attempt to try to be in  
9 my life.

25 So I supported him -- well, I was one of many who

1 supported him while he was in prison financially, so when he  
2 returned home, I think it was October 10, 2013 -- well, I  
3 went and did -- when I went to prison myself and did my two  
4 and half year sentence, I felt -- I felt low because I felt  
5 like I let him down because I was in there and wouldn't be  
6 there for him -- continue being there for him financially as  
7 he was there for me when -- when I was young growing up, so  
8 once I came home from my -- from my prison sentence, I  
9 didn't want anything to do with selling drugs or anything  
10 anymore. I just wanted to work because I can't -- I had  
11 encounters with numerous -- numerous inmates that was in  
12 state prison who had life sentences for drugs and firearms  
13 and that wasn't the route that I wanted to take any more.

14 So when I came home, I just wanted to strictly  
15 work, so I had gained -- I had gained a trade for  
16 specialized carpentry, so my focus was I'm going to just  
17 come home. I'm going to cut hair, and then my uncle already  
18 had his own contracting business, and I said I was going to  
19 work with him and I was going -- and then it just so  
20 happened in the midst of me doing that, one of my best  
21 friends, he winds up getting his own Tastykake route, so  
22 that's how I came to be working on that with him also. So  
23 it was basically financially I was okay. I wasn't worried  
24 about selling drugs. I didn't need to sell drugs.

25 I was able to support my daughter and make sure

1 that she didn't want for nothing and I also wanted to  
2 continue being in her -- I wanted to also continue being in  
3 her life as opposed to how my father was never in my life.  
4 I always swore to myself that I would never be like him,  
5 that I would always be there for my child and that I  
6 wouldn't leave her and I wouldn't steer her wrong as far as  
7 I would be there attending parent/teacher conferences,  
8 eating -- I even attended all the meetings even the get-  
9 togethers with the kids. I would go to school and I would  
10 go to the -- to my daughter's school and I would sit and  
11 read to the class and everything. I no longer wanted people  
12 to look at me as being a drug dealer.

13 THE COURT: So why'd you go back?

14 MR. NATHANIEL COLES: Why did I go back to selling  
15 drugs?

16 THE COURT: Yeah.

17 MR. NATHANIEL COLES: As I said, when Donald  
18 Womack came home, October 10, 2013, he was in the halfway  
19 house up here at Liberty I think it was on Lehigh and  
20 Allegheny. When I first went to meet him his first day  
21 home, we had a sit down meeting in the cafeteria of the --  
22 the halfway house and I asked him who -- after I gave him  
23 some -- some money, I asked him what did he -- what did he  
24 plan on doing because he said that he had his personal  
25 trainer's license. He said to me that he wanted to get back

1 on his feet, so I'm like okay. So you have your personal  
2 trainer's license so that means you would be a personal  
3 trainer and you can make a lot of money doing that.

4 He said no, I need you -- I want you and I need  
5 you to help me get back on my feet. So I basically  
6 understood what he was saying, but I didn't want him to know  
7 that I understood what he was saying so played -- basically  
8 played dumb, so then he went on to elaborate on it and tell  
9 me well, I made -- I made some -- I met some people and I  
10 just need you to help me get back on my feet. He said once  
11 after you help me get back on my feet, you can go and do  
12 whatever it is you were doing, but in a way, a hundred  
13 percent fully, I didn't want to, but being as though it's  
14 him and the influence that he had on me, it was just that  
15 how do I tell this man no?

16 I mean he has been there for me in his own kind of  
17 way, so how do I figure out and tell this man no and when  
18 everybody else in my corner as far as my best friends and  
19 even my mother and other people, they would tell me hey,  
20 stay away from him. He's -- he's bad news. Stay away from  
21 him. He's not -- he's not the kind of guy that you want to  
22 be around or continue to be around, but I'm not seeing him  
23 as everyone is seeing him. I'm seeing him as basically like  
24 dad or daddy. That's how I'm seeing this man, so once he  
25 asked me to -- once he asked me to help him get back on his

1                   feet, I just asked well, what do you need me to do?

2                   So once he laid -- laid out the plan, he was going  
3                   to get with -- he was going to get with basically Will  
4                   Dorsey. He basically -- he paired me and Dorsey up which  
5                   Will Dorsey didn't -- he didn't -- he despised me and I  
6                   didn't care for him much, so he still basically paired us up  
7                   and we were both to get whatever he gave us and we were to  
8                   get rid of it and give him the monetary benefits, but it  
9                   didn't pan out that way, so once all of this happened, the  
10                   -- the thing with -- that I'm here for today, the thing with  
11                   Daniel come along and it was at that point, I was basically  
12                   fed up.

13                   I didn't want no parts of it, but I still indulged  
14                   in it anyway because it was hard to tell this man no, and  
15                   from -- from my knowledge, growing up and knowing -- knowing  
16                   the background and -- and the nature of this man, he's not  
17                   the kind of person that you want to tell no to or be in his  
18                   bad graces. You will always want to remain in his good  
19                   graces, so once the Daniel -- the Daniel conspiracy comes  
20                   along, my email was given to Daniel by Mr. Womack -- my  
21                   email address, so then when I received the email from Daniel  
22                   asking was I -- was I Rob and I told him, no and he asked  
23                   where was Rob? So this was when I had emailed -- no, I had  
24                   texted -- no, I called -- I mean I called Mr. Womack and I  
25                   told him that a guy by the name of Daniel was looking for

2 So he asked me did I want to -- was I going to  
3 talk to him and I told him for what? No, there was  
4 basically no reason for me to talk to him, so then he --  
5 then he told me that -- well, just -- he texted me a number  
6 and he told me well, just give him this number.

9 MR. NATHANIEL COLES: Yes, absolutely. So once he  
10 -- once he texted me the number, which turned out to be  
11 Paris Church's number, I then kept texting him -- I kept  
12 emailing Daniel Womack's number, so then once I was -- kept  
13 emailing him Womack's number as you will hear probably in  
14 the trial transcript that he was saying that I kept emailing  
15 -- I kept sending him his number which I did that on purpose  
16 because I didn't actually want any part of it, so once they  
17 got that figured -- that part figured out that I kept  
18 sending him his number, Womack called me and basically, he  
19 didn't really holler at me, but he kind of chastised me  
20 saying what are you doing? Why -- why don't -- why you keep  
21 giving him my number? I sent you this number to give to  
22 him, so that's when I initiated and gave him Paris Church's  
23 number.

24 THE COURT: But you were selling on your own too  
25 because there was a time you wanted to make the delivery

1                   outside the neighborhood of Rose and Upland and you were  
2                   concerned about your safety and you wanted Mr. Womack to go  
3                   with you because he was carrying a gun.

4                   MR. NATHANIEL COLES: No, that was Will Dorsey.  
5                   That was the Five sixteen -- that was the Five sixteen case.  
6                   Right now, I'm talking about the Four ninety-six.

7                   THE COURT: Right, but I'm talking about with  
8                   respect to the dealing that was going on, you had your own  
9                   dealing that you were doing. Right?

10                  MR. NATHANIEL COLES: Yes, on -- yes. So back to  
11                  the Four ninety-six case, once -- once this happened, I was  
12                  just told that -- once I told Mr. Womack that I didn't want  
13                  anything to do with going back and forth with this guy, he  
14                  told me all I had to do was just tell him to call Paris  
15                  Church. That was basically what I was doing. I'm not  
16                  saying that was right in any kind of way. I'm -- at the  
17                  time, I definitely knew it was wrong. I one hundred percent  
18                  wholeheartedly knew it was wrong, but my way of thinking at  
19                  the time was well, all you're -- all you are doing is  
20                  telling somebody to call somebody else.

21                  Yes, Your Honor, I knew it was -- I knew it was a  
22                  drug deal, a hundred percent knew it was a drug deal, but  
23                  I'm figuring well, I don't have no parts of it. I'm not --  
24                  I'm not going to participate in the actual deal. I'm not  
25                  going to contribute any monetary value or anything to the

1 deal. I'm not going to get any breakdown of anything if  
2 anything goes down, so basically, I didn't have a stake in  
3 the outcome or anything of the deal, but I'm still  
4 wholeheartedly guilty of the conspiracy because I joined it  
5 and I --.

6 THE COURT: Well, on the wire, aren't you talking  
7 about our three hundred dollars?

8 MR. NATHANIEL COLES: Excuse me?

9 THE COURT: On the wire, aren't you talking about  
10 our three hundred dollars which would suggest you had some  
11 money in the pot?

12 MR. NATHANIEL COLES: No, I never said anything  
13 about three hundred dollars. I never knew that Paris Church  
14 sent him three hundred dollars. I never knew that -- I  
15 never knew anything of the actual negotiations. I never  
16 even -- I -- I never even was told about him sending him  
17 three hundred dollars. I found out about him -- I found out  
18 about Paris Church sending him three hundred dollars when --  
19 the day -- on September 26, 2014 when we were indicted for  
20 this and I read my indictment, that's when I found out that  
21 money was sent to him.

22 THE COURT: Where's the future going, Mr. Coles?  
23 Where do you see yourself when you're released from prison?

24 MR. NATHANIEL COLES: When I'm released from,  
25 excuse me, when I'm released from prison, hopefully it just

1                   won't be too late for me. I see myself working. I see  
2                   myself going back to cutting hair and going to school for  
3                   culinary arts because I most definitely want to be a cook.  
4                   That's my passion. That's what I love to do. I love to  
5                   cook. I love to cook for my family. I love to cook for my  
6                   friends. That's where I see myself cooking and take --  
7                   being a great father to my daughter and being there for my  
8                   mother and my sisters and my nieces and my nephew.

9                   THE COURT: Is there anything else you want me to  
10                  consider?

11                  MR. NATHANIEL COLES: Just every -- everything in  
12                  general that I'm very, very, extremely sorry for what I've  
13                  done. I'm not -- I'm not saying that I'm not guilty of this  
14                  conspiracy. The only thing that I -- the only thing I ever  
15                  did, and I am doing is contesting the drug amount of  
16                  eighteen kilograms. That's the only thing.

17                  THE COURT: All right.

18                  MR. NATHANIEL COLES: And also -- I'm sorry. You  
19                  were going to speak?

20                  THE COURT: No, go ahead.

21                  MR. NATHANIEL COLES: And also, I didn't go -- I  
22                  didn't go to trial on behalf of just trying to be snobbish  
23                  or anything. I understand that you -- you are aware that I  
24                  have been through three attorneys.

25                  THE COURT: And -- and you have the right to go to

1 trial, sir, and that --

2 MR. NATHANIEL COLES: Yes.

3 THE COURT: -- that's -- that's not a problem.

4 MR. NATHANIEL COLES: Yes, but at the beginning --  
5 at the beginning of trial, my attorney at the time, Daniel  
6 McGarrigle -- I asked him could we -- could we venture down  
7 the avenue of pursuing a plea deal? He told me that there's  
8 no way -- there's no way that we need to pursue a plea deal  
9 because it's -- there's -- there's no evidence on you. He  
10 told me -- he told me that I'm -- I'm going to beat this.  
11 I'm going to beat this. He said the only thing we'll have  
12 to worry about is talking about the five -- the five sixteen  
13 case.

14 MS. CHAVAR: Hang on a second. Your Honor, if I  
15 may, he wants to appeal that conviction and I'd rather him  
16 not make any statements.

17 THE COURT: Yeah, I was going to say I'm not sure  
18 this is --

19 MS. CHAVAR: Thank you.

20 THE COURT: -- the appropriate time or place --

21 MS. CHAVAR: Yes.

22 THE COURT: -- to make --

23 MS. CHAVAR: Uh-huh.

24 THE COURT: -- to have this discussion. Anything  
25 further, Mr. Coles?

1 MR. NATHANIEL COLES: Yes, that's basically it,  
2 Your Honor. I apologize for -- for me being in front of you  
3 today and I hope and pray that you will be able to have some  
4 leniency towards me in the sentence that you will hand down  
5 to me.

14 MR. ECKERT: Just -- just on acceptance, even  
15 today it's I wasn't really in the deal. I -- my  
16 recollection of the closing argument was, and this is what's  
17 in the Rule Twenty-nine motion is he was vaguely aware of  
18 what Mr. Church was doing. That's a factual denial of an  
19 intent to be in a conspiracy. An acceptance of  
20 responsibility is a sacrosanct principle of the federal  
21 system that if a person comes in here and pleads guilty,  
22 they deserve a break as well they should.

23 THE COURT: Right.

24 MR. ECKERT: Now he has every right to go trial  
25 and I take no issue with that, but for him to come in here

1 and say I deserve acceptance, I think it's just absolutely  
2 not belied by this record whatsoever. Thank you.

3 THE COURT: I understand. With respect to the --  
4 the Defense argument that ones acceptance of responsibility,  
5 I'm not persuaded that an adjustment in the offense level  
6 would be appropriate with the record before given the  
7 position at trial and so as to that request for either a  
8 downward departure or a downward variance, the request is --  
9 that -- that argument is -- is rejected.

10 I do think that it's important under controlling  
11 Third Circuit precedent and under the guidelines for me to  
12 give very careful consideration to the arguments under Three  
13 B one point two with respect to this defendant's role in the  
14 offense. I am not persuaded that it was a minimal role, but  
15 I am persuaded that the two-level downward adjustment is  
16 appropriate for a minor role in the conspiracy and -- and I  
17 base that on a close comparison of Mr. Coles' involvement  
18 with respect to the other defendants in the case  
19 particularly as to Mr. Womack and Mr. Church from the record  
20 before me, and I understand the Government's position that  
21 there is to some degree just a matter of how the evidence  
22 unravels and what is or is not caught on the wiretap.

23 But nonetheless, given the importance of that  
24 consideration for offense level, unless the evidence is  
25 there that would suggest that Mr. Coles is involved to the

1 same degree as the other defendants, an appropriate  
2 adjustment downward is indicated and in that regard, it's  
3 not just the -- the frequency with which the other  
4 defendants are involved in the discussions, but the specific  
5 content of the discussion between them was far more specific  
6 as to the details of the conspiracy and I also place weight  
7 on the fact that in addition to what the Third Circuit has  
8 said, I agree with Ms. Chavar that it is significant from  
9 the standpoint of the Sentencing Commission that they  
10 focused on this as a guideline in need of amendment and in  
11 need of amendment because it was not being utilized  
12 appropriately as it should be, and so I -- I accept the  
13 argument from the Defense on that and we'll make a two-level  
14 downward adjustment.

15 I think there's sufficient evidence for that by  
16 way of departure, but it would also qualify for a variance  
17 on the record in the case and by making that downward  
18 adjustment, the -- the guideline range changes, if we keep  
19 the criminal history category the same which I will comment  
20 on in a minute, to two hundred and ninety-two to three  
21 hundred and sixty-five months. Let me discuss somewhat then  
22 Mr. Coles' criminal history. I think the Defense concedes  
23 that the predicate offenses here do qualify as -- as career  
24 offender offenses and in finding that enhancement applicable  
25 here, we agree that there's not a Nine fifty-one information

1 required.

2                   But in finding it applicable, I'll look at the  
3                   totality of the record in the case and in particular in that  
4                   regard, the two-prior possession of a firearm offenses on  
5                   the part of the defendant which the Court takes very  
6                   seriously. The -- the question then becomes are there any  
7                   other appropriate adjustments to be made and I do think that  
8                   there is a strong argument made for a further variance  
9                   downward with respect to the drug quantity as follows:  
10                  While I'm persuaded that the record is clear that Mr. Church  
11                  and Mr. Womack had specific expectations of -- of delivery  
12                  of something in the range of eighteen kilograms and even  
13                  higher numbers that were discussed at certain points, the  
14                  record is not clear to me that Mr. Coles had a similar  
15                  degree of awareness as to the scope of the conspiracy and  
16                  taking into account the Collata, I think this also builds  
17                  off of the fact that I found that the downward adjustment  
18                  for minor role was appropriate, I am not persuaded that he  
19                  should be charged with the same level of culpability with  
20                  respect to amount as Mr. Church and Mr. Womack.

21                  I'm also in this case influenced to a certain  
22                  degree by the -- the history of Mr. Coles and the fact that  
23                  at a young and vulnerable age in his life I am persuaded  
24                  that Mr. Womack became a force in his life and a force for  
25                  ill. I'm sufficiently familiar with Mr. Womack and it's

1 clear to the Court based upon the history of this case that  
2 he is an individual that has a certain charismatic quality,  
3 that he has certain attributes that people view as worthy of  
4 veneration. The date of his sentencing, I heard from  
5 someone from the federal detention center about the positive  
6 impact that Mr. Womack had on him.

7 Mr. Coles here says that he was both a force for  
8 good and a force for ill in his life and so with respect to  
9 that, it's clear to me that when Mr. Coles was at a  
10 formative age and stage in his life, Mr. Womack was a -- an  
11 important presence and a presence for ill. Whatever he  
12 taught Mr. Coles that was positive was offset by his  
13 introduction to a criminal way of life to the use of drugs  
14 and I do think that on the record in this case, and my  
15 familiarity with the specifics that some further downward  
16 variance is appropriate essentially because of the lack --  
17 not just the lack of youthful guidance, but the negative  
18 influence on the part of Mr. Womack who, as I have noted, I  
19 think is a person that apparently has a great deal of  
20 influence in some ways and so take -- I also take into  
21 account the age that Mr. Coles is at this point in his life  
22 -- in his thirties and if you look at the guideline range of  
23 thirty years to life, I think it's an inappropriate range as  
24 well taking all of these factors into account.

25 So having reduced the offense level to thirty-five

1 and given the guideline range of two hundred and ninety-two  
2 months, I reject Ms. Chavar's suggestion that a sentence  
3 below fifteen years is an appropriate sentence, but with the  
4 further downward adjustment, it's the sentence of the Court  
5 that Mr. Coles serve a total of two hundred and forty  
6 months. With respect to Fourteen four ninety-six and the  
7 agreed upon recommended sentence of ten years on fourteen  
8 five one six which is a mandatory minimum of ten years, so  
9 in a sense -- to say it in plain English, Mr. Coles, it's a  
10 twenty-year sentence. I believe that's the appropriate  
11 sentence here taking into account all of the factors set  
12 forth above. I think it is sufficient to underscore the  
13 seriousness of the offense here and promote respect for law  
14 in the overall construct of Mr. Coles' comparatively limited  
15 involvement with respect the conspiracy to import the drugs  
16 from Mexico with Daniel.

17 With respect to the need for punishment and  
18 individual deterrence as to punishment, given Mr. Coles'  
19 youth and the fact that he's going to be incarcerated during  
20 the many -- many of the prime years of his life, I believe  
21 for that reason, it's a sufficient sentence. With respect  
22 to specific deterrents, I do attach significance as Ms.  
23 Chavar argues to his fine record in the federal detention  
24 center and you're arguing to a judge that's taught in the  
25 Philadelphia prisons, I'm aware of the realities of prison

1 life and trouble finds people when they don't look for it  
2 and the fact that no trouble has found Mr. Coles is some  
3 testament to the fact that he's making some effort to  
4 rehabilitate himself. I've previously expressed that I'm  
5 not sure that sentences of this kind have a general  
6 deterrent, but to the extent that they do, I think a twenty-  
7 year sentence is a sufficient message to others who might be  
8 tempted to follow in the footsteps of a Donald Womack.

9                   With respect to Mr. Coles' need for vocational  
10 training, I'm encouraged by the fact that he previously had  
11 acquired wood working skills and also has some culinary  
12 talents but believe that he could also benefit from further  
13 vocational training while incarcerated. I will make a  
14 recommendation to the Bureau of Prisons that he be afforded  
15 treatment for basically alcohol addiction more than drug  
16 addiction. Am I right, Ms. Chavar?

17                   MS. CHAVAR: Yes, Your Honor.

18                   THE COURT: For -- for alcohol --

19                   MS. CHAVAR: If he --.

20                   THE COURT: -- addiction to the extent that that's  
21 available and a recommendation that he be placed in a  
22 facility that's close to Philadelphia as possible so that he  
23 can maintain contact with his daughter. With respect to  
24 supervised release, with respect to four sixteen, the -- I'm  
25 trying to find the required sentence is I think ten years of

1 supervised release. Correct?

2 OFFICER BOYER: That's correct, Your Honor.

3 MR. ECKERT: That's my understanding.

4 THE COURT: And so the -- the maximum sentence for  
5 supervised release will be ten years with an eight year --  
6 followed by eight years and three years for the other  
7 counts, but all to run concurrently. With respect to  
8 supervised release, Mr. Coles' as I'm sure you're aware, it  
9 is greatly important that you not commit any other offense  
10 against federal, state or local law. All right.? Because  
11 if you do so, that will be a violation and you will be back  
12 in front of me and I trust you understand that today, I've  
13 given you a meaningful reduction in sentence from what the  
14 guidelines would call for and from what the Government has  
15 asked me to impose, so if you were to be back in front of me  
16 on a violation of supervised release, it will be with my  
17 knowledge that you had already been given that accommodation  
18 at the time of sentencing.

19 While on supervised release, as I'm sure you  
20 understand, you cannot possess a firearm nor could you as a  
21 convicted felon or any other dangerous device, cannot use or  
22 possess any controlled substance, and you shall submit to a  
23 drug test upon release from prison and then periodically at  
24 such points as the probation office deems appropriate and  
25 drug test there to include alcohol breathalyzer evaluation

1 if that's deemed necessary. Mr. Coles shall participate in  
2 a program to combat alcohol addiction and to the extent that  
3 probation deems it necessary, any program necessary for  
4 improving his literacy, education or employment skills.

5 When someone is on supervised release, Mr. Coles,  
6 they must provide full financial disclosure to the probation  
7 office which will include tax returns and you're not able to  
8 borrow money or take a credit card without the consent of  
9 probation. I see no purpose here that would be served by  
10 the imposition of a fine, but it is my requirement to impose  
11 a mandatory special assessment of one hundred dollars per  
12 count and I believe there's a total of eight counts, so the  
13 special assessment would be eight hundred dollars. Mr.  
14 Eckert, from the standpoint of the Government, are there any  
15 other conditions of supervised release you think the Court  
16 should address?

17 MR. ECKERT: I don't believe so, Your Honor.  
18 Thank you.

19 THE COURT: All right. And Ms. Chavar, from the  
20 standpoint of the defendant?

21 MS. CHAVAR: No, Your Honor.

22 THE COURT: All right. Mr. Coles, good luck to  
23 you, sir.

24 MS. CHAVAR: Your Honor?

25 MR. ECKERT: Your Honor, can you just announce the

1 forfeiture part of the sentence? I didn't mean to interrupt  
2 you. I apologize.

3 THE COURT: Thank you. The order of forfeiture  
4 signed today without objection will be incorporated into the  
5 terms of the sentence --

6 MR. ECKERT: Thank you.

7 THE COURT: -- and then of course, I would ask Ms.  
8 Chavar to give the defendant his rights of appeal.

9 MS. CHAVAR: Okay. You have the right to appeal  
10 this sentence. If you do want to appeal, you have to file a  
11 notice with the Court in fourteen days. You let me know  
12 that and I'll file that appeal for you. If you can't afford  
13 a lawyer, then you will have a lawyer appointed to represent  
14 you. I believe my appointment would continue. Okay?

15 MR. NATHANIEL COLES: Okay.

16 MS. CHAVAR: All right. Thank you, Your Honor.

17 THE COURT: Counsel, anything further?

18 MS. CHAVAR: Just -- just a minor thing, with  
19 respect to drug treatment, I've been told recently that  
20 unless it says that you recommend the residential drug  
21 treatment program, he doesn't go to a facility that has a  
22 treatment program and it's just like the classes that he's  
23 already had at the F.D.C.

24 THE COURT: I'll -- I'll address that with  
25 probation, Ms. Chavar --

1 MS. CHAVAR: Thank you.

2 THE COURT: -- and whatever is the --

3 MS. CHAVAR: Okay.

4 THE COURT: -- appropriate recommendation is what  
5 we'll make.

6 MS. CHAVAR: And -- and while I have Mr. Eckert  
7 here, one of the things that Ms. Phillips I think didn't  
8 have the time to do before she left was lift separations  
9 which were supposed to be lifted --

10 MR. ECKERT: Okay.

11 MS. CHAVAR: -- and what it means is that it's a  
12 list of twenty-six people he's still separated from.

13 MR. ECKERT: Okay.

14 MS. CHAVAR: He won't go anywhere near here.

15 He'll be like halfway across the country with these still in  
16 place.

17 MR. ECKERT: We -- if I may, before he's  
18 designated, the B.O.P. will reach out to me about the --  
19 whether the separations will remain in place. I'll talk to  
20 Ms. Chavar about -- I certainly will concur that based on  
21 the current status of the case, it's highly unlikely that he  
22 needs to remain separated from anyone who did not cooperate,  
23 but we can certainly --

24 THE COURT: Right.

25 MR. ECKERT: -- address that.

1                   THE COURT: Yeah, Mr. Coles was not a cooperator.

2                   I would not assume he's in jeopardy and so --

3                   MR. ECKERT: Right.

4                   THE COURT: -- yeah.

5                   MR. ECKERT: Exactly.

6                   THE COURT: All right. I'll -- I'll rely on  
7                   counsel to work that out in an appropriate way.

8                   MR. ECKERT: Very well.

9                   MS. CHAVAR: Thank you, Your Honor.

10                  THE COURT: Thank you, counselors.

11                  MR. ECKERT: Thank you.

12                  THE COURT: We're adjourned.

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